

EU Corporate Sustainability Due Diligence Directive

Vattenfall's views on the European Commission proposals

Confidentiality class: None (C1)

Date: **June 2022**

Our goal is to enable fossil-free living within one generation and to do so responsibly. We are committed to respecting the environment and human rights throughout our value chain, from our suppliers to our customers and the communities we work in.

Vattenfall therefore generally **welcomes setting up a harmonised set of rules and requirements** on corporate social responsibility and sustainability along the supply chains in an **EU legal framework following international recognised requirements as from the OECD**, enabling enforcement and civil liability.

A risk-based approach should be at the heart of the Directive to enhance companies efforts to mitigate risks as well creating positive impact throughout value chains.

Furthermore, we support the inclusion of requirements to **align business models with the 1.5° scenario from the Paris agreement** and the **expansion to companies doing business in the EU**, not just EU-headquartered companies, as this will help to positively impact human rights, as well as level the playing field.

A careful balance for the reporting requirements needs to be found, e.g. by having requirements on group level and not each individual legal entity, **so that stakeholders can keep on focusing on contributing to positive change.**

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Vattenfall is a European energy company with approximately 19,000 employees. For more than 100 years we have electrified industries, supplied energy to people's homes and modernized our way of living through innovation and cooperation. Our goal is to make fossil-free living possible within one generation. Everything we do and the decisions we take shall lead to this goal. This is the basis of Vattenfall's strategy, and we advocate for a regulatory environment that makes this transition possible – in the energy sector and beyond in transport, industry etc.



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Background

On 23rd May, the European Commission has adopted a proposal for a Directive on corporate sustainability due diligence. The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains.

GENERAL REMARKS

- **Vattenfall supports the inclusion of requirements to align business models with the 1.5° scenario** from the Paris agreement **and the expansion to companies doing business in the EU**, not just EU-headquartered companies, as this will help to positively impact human rights, as well as level the playing field.
- In order to achieve the objectives of the Directive in an efficient manner, the **requirements should be aligned with existing regulations and guidelines to the greatest possible extent**, e.g. by fully adopting the entire OECD guidelines. Since the Directive affects a large number of companies, there is a need for both the greatest possible clarity regarding terms, responsibilities and instruments and a high degree of harmonisation of the rules between the Member States. We therefore advocate bringing the planned Directive in line with existing national and international laws, regulations and guidelines so as not to place an undue burden on companies. In this way, unproductive additional work can be avoided so that companies can concentrate on fulfilling the core task in terms of human rights and sustainable business.
- Against this background, also **reporting and disclosure requirements should be appropriately limited and integrated into existing reporting systems**. In particular, they should meet or refer to the expectations of the UNGPs and e.g. Article 18 of the Taxonomy Regulation. This would avoid the need to build up considerable additional resources in companies and public administrations.
- The Directive would benefit from **a full alignment with the role of the National Contact Points for the OECD Guidelines for Multinational Enterprises**.
- Collaboration such as **industry and sector initiatives should be more strongly recognized** in the Directive. They are an important tool to increase transparency and leverage since sustainability issues throughout the value chain can be hard to identify and mitigate whilst being salient.
- To safeguard regulatory clarity, consistency and accountability of the framework the **requirements should be regulated as precisely as possible in legislative documents**, either in the Directive or in an accompanying regulation rather than in 'guidelines' or 'delegated acts'.

FURTHER COMMENTS

In addition to this general assessment, in our view there is a **need for clarification and simplification in particular on the following points:**

- **Responsible addressee:** The guideline should apply to the company's own operations, subsidiaries and value chains. It needs to be clarified who should ultimately be responsible, especially for companies operating in different European countries. Placing the requirements (e.g. Art. 15, 25) on each individual legal entity of a group is administratively inefficient/impracticable. The **responsibility in these cases should lie with the group level**. A corresponding group definition (grouping of several legal entities) should be supplemented and, if necessary, adopted on the basis of regulations in existing legal provisions (Art. 3).
- **Use of risk-based approaches** – While the European Commission is mentioning that they are going to apply a risk-based enforcement framework for the upcoming Sustainable Product Initiative, we miss such risk-based approach in the CSDD. **A risk-based approach would ensure that the most salient risks no matter if caused in an established or non-established relationship are**

addressed. Including a risk-based approach and not limiting the subject matter of the Directive to 'established business relationships' would be in line with UN Guiding Principles. (Art. 2)

We recognise the importance of the value chain, the envisaged definition and requirements, however, cannot possibly be met in practice. **Commitments should focus on relationships along the supply chain, using a risk-based approach as envisaged by the UN Guiding Principles on Business and Human Rights (UNGP).** It should be clarified that this excludes customers, at least from the perspective of an energy company (from the perspective of a company that is in the middle of the value chain and does not only have end points as customers). A sound and pragmatic definition of supply chains should be used. For example, the German Supply Chain Act could provide a good basis.

- The Directive should provide **guidance for the assessment of actual and potential adverse impacts** instead of delegating to Member States to define appropriate measures to address these. Guidance in the Directive, would ensure an EU-wide harmonized approach. Furthermore, suitable industry initiatives or independent third-party verification for the assessment as well as for verifying compliance should be acknowledged. (Art. 7 par. 4)
- **The cancellation of a contract or the extraordinary termination of business relationships as required in Art. 7 par. 5 should be the measure of last resort.** In order to be effective, the criteria for this measure should be more clearly defined, standardised between the Member States and accordingly anchored in international regulations. Next to the practical difficulties, the extraordinary termination of business relations can be counterproductive with regard to the objective of improving the sustainability performance along the supply chain. In addition to a fundamentally necessary technological and geographical diversification, the energy transition in Europe particularly requires new technologies, the procurement of which establishes new supply chains that entail new risks. Transparency and traceability can be temporarily low, as the risks in the supply chain can be on several levels and the possibilities of influence for individual market parties are limited. It is therefore very important to find the right balance between risk on the one hand and the company's influence in the supply chain on the other. Therefore, cooperation with partners in the supply chain and the global definition and enforcement of due diligence obligations are of crucial importance in order to achieve a long-term and systematic impact.
- **Complaints procedure:** Complaints procedure should be better aligned with the effectiveness criteria of the UNGPs and sufficiently linked to other processes in the proposal, such as the processes for identifying impacts and actions to address them.

Again, we welcome setting up a harmonised set of rules and requirements on corporate social responsibility and sustainability along the supply chains in an **EU legal framework following international recognised requirements as from the OECD**, enabling enforcement and civil liability. A risk-based approach should be at the heart of the Directive to enhance companies efforts to mitigate risks as well creating positive impact throughout value chains. A careful balance for the reporting requirements needs to be found so that stakeholders can keep on focusing on contributing to positive change.